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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 54th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 5 December 1996, at 4.30 p.m.

Chairperson: Mr. ALSTON

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1996/SR.54.

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The public meeting was called to order at 4.30 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Draft optional protocol to the Covenant (continued) (E/C.12/1996/CRP.2/Add.XX)

1. The CHAIRPERSON introduced the draft report of the Committee to the Commission on Human Rights concerning a draft optional protocol providing for the consideration of communications (E/C.12/1996/CRP.2/Add.XX, English only), in which the observations and proposals made during the consideration of document E/C.12/1996/CRP.2/Add.1 had been taken into account. He drew the attention of the members of the Committee to paragraph 3, in which it was stated that, in the course of the Committee's discussions, two of its members - Mr. Grissa and Ms. Taya - had indicated that they were opposed to the proposal to draft an optional protocol. It was also stated that their views were reflected in the summary records of the meeting.

2. Mrs. JIMENEZ BUTRAGUEÑO, supported by Mr. ALVAREZ VITA, said that she understood that, unlike Mr. Grissa, Ms. Taya was not totally opposed to the idea of an optional protocol. The proposals she had made during the discussion of the draft optional protocol were highly interesting and could serve as a basis for drawing up an optional protocol on the right to development.

3. Mr. WIMER ZAMBRANO recalled that Ms. Taya had said that she was not in favour of the adoption of the draft optional protocol as it stood.

4. Ms. TAYA said that Mrs. Jimenez Butragueño had correctly understood her position. In view of the budgetary difficulties of the United Nations, the Committee should emphasize the most important economic, social and cultural rights and, in particular, direct its efforts to strengthening international cooperation for development and improving existing procedures. She doubted that the draft optional protocol would make it possible to attain those ends. She requested that the text of the statement concerning the draft that she had made at the 45th meeting should be annexed to the report submitted to the Commission on Human Rights.

5. The CHAIRPERSON said that it would be contrary to the Committee's practice to accede to her request. The summary records of the meetings at which the draft optional protocol had been discussed would be annexed to the report submitted to the Commission, which would thus be able to acquaint itself with the opinions expressed by each of the Committee's members.

6. Mr. MARCHAN ROMERO pointed out that Mr. Grissa had, for his part, expressly requested that the report submitted to the Commission on Human Rights should place on record his opposition to the optional protocol.

7. The CHAIRPERSON suggested that, in the circumstances, the last sentence of paragraph 3 should be amended to read: "In the course of the Committee's discussions, one of the members, Mr. Grissa, requested that his opposition to

the proposal to draft an optional protocol be put on the record. Another member, Ms. Taya, indicated that she felt that any optional protocol to be adopted should focus on international development cooperation".

8. The suggestion was adopted, subject to editorial changes.

9. The CHAIRPERSON drew the Committee's attention to a number of particularly important paragraphs in the report. Paragraph 14 explained why the Committee had decided, after a lengthy discussion, not to recommend the inclusion of an inter-State complaints procedure within the proposed optional protocol. In paragraph 23, the Committee recommended that the right to submit a complaint should be extended also to individuals or groups acting on behalf of alleged victims, provided that, in the view of the Committee, they were acting with the knowledge and agreement of the alleged victims.

10. Mr. WIMER ZAMBRANO said he would have preferred that, in certain specific cases, reliable NGOs could be authorized to submit complaints to the Committee without the victims' consent.

11. The CHAIRPERSON pointed out that paragraph 23 merely reiterated the compromise which the members of the Committee had reached on the subject.

12. Mr. TEXIER said that the expression "in the view of the Committee" allowed the latter a degree of leeway to interpret the provision. He hoped that the Committee would, if necessary, prove flexible.

13. The CHAIRPERSON drew the Committee's attention to paragraph 25, in which it was stated that the right to self-determination should be the subject of a communication only insofar as economic, social and cultural rights dimensions of that right were involved.

14. Regarding the issue of whether States parties should be allowed to accept the planned procedure in respect of all the rights recognized by the Covenant or in respect of some of them only, paragraph 28 indicated that the majority of the Committee's members had expressed a clear preference for a comprehensive approach, while a strong minority favoured the adoption of a selective approach.

15. Paragraph 31 contained the new version of draft article 2. The main change involved making it possible for any individual or group acting on behalf of an individual or a group claiming to be a victim of a violation of any of the economic, social or cultural rights recognized in the Covenant to submit a communication to the Committee.

16. Paragraph 39 indicated that the question of the protection of the identity of alleged victims would be dealt with by the rules of procedure. Finally, in paragraph 57, the Committee recommended that the Commission on Human Rights should consider making provision for States which opted for a comprehensive approach (para. 28) to lodge reservations.

17. Mr. TEXIER, supported by Mr. ALVAREZ VITA, said that the Chairperson had successfully carried out an enormous task and had faithfully reflected the discussions in the Committee. He regretted, however, that unanimity had not

been achieved within the Committee on a number of essential provisions of the draft optional protocol. Those States represented on the Commission on Human Rights which were opposed to the adoption of an optional protocol were likely to find arguments to support their point of view in the disagreements that had emerged within the Committee.

18. The CHAIRPERSON said he hoped that the Committee's work would bear fruit in one way or another, whatever decision the Commission might take regarding the draft protocol.

19. The draft report of the Committee on a draft optional protocol providing for the consideration of communications, as amended, was adopted, subject to minor editorial changes.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 5) (continued)

20. The CHAIRPERSON informed the Committee that the pre-sessional Working Group responsible for preparing the sixteenth session would consist of the following experts: Mr. Adekuoye, Mrs. Bonoan-Dandan, Mrs. Jimenez Butragueño, Mr. Kouznetsov and Mr. Rattray. At that session, the Committee would consider the periodic reports of the Libyan Arab Jamahiriya, Guyana, Zimbabwe, the Russian Federation and Peru, together with the report of the Dominican Republic if that State replied to the preliminary observations that would be sent to it.

21. Mr. TEXIER asked whether the Committee would also consider the report of Honduras, which that country's Government had undertaken to submit to it before the sixteenth session.

22. The CHAIRPERSON said that, even if the Government of Honduras submitted its report to the Committee before 1 May 1997, as it had been requested to do in writing, the Committee would be unable to consider it at its sixteenth session as the pre-sessional Working Group would not have had time to examine it. However, if the Committee did not receive the report by the deadline, it would have to consider the situation in Honduras at its sixteenth session in the absence of representatives of the State party.

23. Furthermore, he had written to the Government of Canada, as agreed, to request it to indicate when it would submit its third periodic report and to provide additional information on the follow-up to the Committee's concluding observations on the previous report. He had also requested the Government of the Philippines to provide clarifications on the number of forced evictions allegedly carried out in that country. He had also drawn the attention of the Government of Israel to the fact that, since its fourteenth session, the Committee had asked when Israel would submit its initial report. Lastly, he intended to request the Government of Nigeria to inform the Committee, either in its report or separately, concerning a number of points which the Committee had raised in earlier letters, as yet unanswered.

24. The High Commissioner for Human Rights had indicated that he was prepared to consider a programme of action for the Committee. He himself was willing, if the Committee agreed, to prepare a draft programme of action which

would take into account all the important issues that had been raised at recent sessions of the Committee, such as the organization of seminars with the World Bank. In the programme of action, the Committee could request the Centre for Human Rights to focus greater attention on economic rights in its advisory services. He also suggested mentioning in the programme the need to ensure follow-up to the United Nations Conference on Human Settlements (Habitat II) and the World Food Summit, which had underscored the importance of the rights guaranteed by the Covenant and the essential role played by the Committee and the Office of the High Commissioner in promoting the right to housing and to food.

25. The Chairperson's suggestion was adopted.

26. The CHAIRPERSON also suggested that, in its report, the Committee should recommend that the Commission on Human Rights consider the possibility of appointing a special rapporteur on economic, social and cultural rights: the Committee's task would be considerably facilitated if those rights were given greater importance in the work of the Commission. Such a recommendation would also be directly in line with the discussions held by the Committee on the draft optional protocol.

27. Mr. CEAUSU proposed the insertion of a paragraph at the beginning of the report, describing the circumstances that had led to the establishment of the Committee.

28. The proposal was adopted.

29. Mr. SIMMA said that a Swiss non-governmental organization, the Comité de lutte contre l'écolage dans les écoles moyennes (Committee against School Fees in Intermediate Schools) had informed him that, in 1995, the authorities of the Canton of Zurich, which had already reintroduced "tuition fees" in the university, had submitted a bill to restore school fees in secondary education. School fees had been abolished in 1965 on the grounds that the Canton had sufficient funds in its budget and that it was important to encourage young people to acquire a secondary education; however, the authorities were currently invoking the difficult financial situation and the need to encourage more young people to become apprentices. The Comité de lutte contre l'écolage had, in the first place, taken its case to the cantonal authorities, and had pointed out that the bill was contrary to article 13, paragraph 2, subparagraph (b), of the Covenant, and subsequently, as there had been no response, had taken the case to the federal authorities.

30. On 17 June 1996, Mrs. Dreifuss, the federal Minister of the Interior, had stated before the Federal Assembly that the Federal Council had hitherto taken the view that those provisions of the Covenant did not proscribe the charging of school fees, at least for post-compulsory education, and did not limit the freedom of the competent authorities - in that case the cantons - to decide. In September 1996, the Federal Council had indicated that, as it was not aware of any practices contrary to article 13, paragraph 2, of the Covenant, the question of the legal remedies of which it could avail itself

to oppose a violation of international law by the cantons did not arise. However, if a case of such a violation could be made, it could send a circular to the cantons reminding them of the obligations deriving from the Covenant, which was an integral part of Swiss domestic law.

31. In view of that response, it would be advisable for the Committee to draw the Swiss Government's attention to general observation 3 concerning the nature of States parties' obligations, which might encourage the Federal Government to do everything possible to ensure that the cantons adopted a policy that was in conformity with the spirit and the letter of the Covenant. He proposed that the Committee should send a letter to the Swiss Government, emphasizing its interpretation of article 13, i.e. that, if a Government introduced regressive measures, it should make a particular effort to justify them.

32. The CHAIRPERSON suggested that Mr. Simma should draft a letter along those lines.

33. It was so decided.

34. Mr. TEXIER read out a letter to the Government of Colombia, which he had been asked to draft, in which the Committee would request explanations concerning the information sent to it by the Asociación Nacional de Usuarios Campesinos (ANUC) on the extremely serious Hacienda Bellacruz affair. Since about 10 years previously, the peasant communities which tilled the land on that agricultural estate had been suffering evictions, enforced disappearances and acts of violence, some of their members having allegedly even been tortured and murdered; paramilitary groups had allegedly set fire to their homes and property and destroyed their crops, in the presence of army patrols. In its letter, the Committee would request the Government of Colombia to provide it with full information on the measures it had taken to put an end to those practices and recommend that it establish, at the earliest possible date, the office of the representative of the High Commissioner for Human Rights in Colombia, in conformity with the statement made by the Chairman of the Commission on Human Rights, at its fifty-second session.

35. The Permanent Mission of Colombia had sent a letter to the Chairperson of the Committee concerning the matter, but the letter merely repeated the information contained in a letter sent to the Special Rapporteur on extrajudicial executions, Mr. Ndiaye. For his own part, he had recently learned that a number of families were currently occupying the Colombian Institute for Agrarian Reform (INCORA) in Bogotá, because they had nowhere else to go and there were no plans to resettle them on the land on which they had been living.

36. Mr. ALVAREZ VITA said that the form of the letter should be amended, perhaps by making greater use of the conditional tense. The accusations were serious ones, and the tone was too assertive. For example, the letter could indicate that the Committee was concerned by the information it had received, according to which certain incidents had occurred in Colombia.

37. Mr. WIMER ZAMBRANO, supported by Mr. Simma, endorsed Mr. Alvarez Vita's remarks. He also suggested that the letter should be made more concise, the penultimate paragraph, which was too general, deleted, and the words "communidades campesinas desplazadas" replaced by "communidades campesinas expulsadas".

38. Mr. MARCHAN ROMERO said that, while he endorsed the proposals by Mr. Alvarez Vita, Mr. Wimer Zambrano and Mr. Simma, he was opposed to abbreviating the letter.

39. The CHAIRPERSON suggested adding a paragraph in which the Committee would indicate that the letter was a follow-up to the conclusions and recommendations made by the Committee at its thirteenth session when it had considered Colombia's report. Lastly, the letter should be addressed to the Permanent Mission of Colombia.

40. Mr. TEXIER said he had taken due note of those suggestions.

The meeting rose at 6.05 p.m.